

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM-188A, Amdt. No. 164]

Transportation of Hazardous Substances Between Canada and the United States

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: Section 173.8 of the Department's Hazardous Materials Regulations (HMR) does not currently allow shipments of hazardous materials designated as hazardous substances to be transported by railroad into or through the United States in conformance with the regulations of the Canadian Transport Commission (CTC). The purpose of this final rule is to amend § 173.8 to allow hazardous substances (other than hazardous wastes) that are subject to the CTC Regulations to be transported into or through the United States in accordance with CTC Regulations. This action is being taken in recognition of recent amendments to the CTC Regulations which provide for the proper identification of hazardous substances during transport.

EFFECTIVE DATE: This amendment is effective May 26, 1983.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 426-0656.

SUPPLEMENTARY INFORMATION: Section 173.8 of the HMR allows, with certain exceptions, shipments of hazardous materials to be transported by railroad into or through the United States in conformance with the CTC Regulations. One of the exceptions to this provision pertains to hazardous substances. Therefore, no (so-called) reciprocity is granted with respect to the transport of these materials and they must be transported fully in accordance with HMR. It was not intended by MTB that this exception should apply to all of the transport requirements for hazardous substances (e.g., packaging and, when required labeling requirements). The original intent in including this exception in § 173.8 was to insure that shipments of hazardous substances entering the United States from Canada conformed to the additional description

and marking requirements in the HMR applying to hazardous substances. However, the manner in which the text of § 173.8 was drafted results in a total exclusion of hazardous substances from the provisions of § 173.8.

Problems have been encountered in the transport of hazardous substances from Canada to the United States as a result of this exception. Many materials designated as hazardous substances in the HMR, which also meet the definition of another hazard class, have classifications and labeling, placarding and description requirements under the CTC Regulations that are different from those under the HMR. Because these materials are excluded from the reciprocity provisions of § 173.8, they are required to be replacarded and relabeled, and to have shipping papers prepared in accordance with the HMR, before they enter the United States. Many of these materials are of very considerable commercial importance and the requirement to replacard, relabel and redescribe them imposes a serious burden on industry and results in an unnecessary delay in the movement of these materials.

On May 10, 1983, the CTC adopted changes to its regulations that define and designate hazardous substances in the same manner as they are defined and designated in the HMR. These changes also prescribe Reportable Quantities (RQ) for the designated hazardous substances that are consistent with those prescribed in the HMR. Furthermore, these amendments require the identification of hazardous substances on shipping papers and in package marking in the same manner required in the HMR. Consequently, the MTB believes there is no need to maintain the exception for hazardous substances in § 173.8 in order to insure the adequate identification of hazardous substances transported into the United States from Canada, and is deleting the reference to hazardous substances in this section.

It must be noted that not all of the materials designated as hazardous substances in the HMR have also been designated as such in the CTC Regulations. Under the amended CTC Regulations, only those materials designated as hazardous substances in the HMR and which also meet the definition of another hazard class in the CTC Regulations, have been designated as hazardous substances. However, as explained in Docket No. HM-188 (48 FR 20255), the MTB has determined that reciprocity exists with the CTC Regulations under § 173.8 only in regard to the transport of hazardous materials

that are subject to both CTC and DOT regulations. That is, unless a CTC Regulation applies to a material considered a hazardous material under the HMR, the provisions of § 173.8 do not apply and the material must be transported in conformance with the HMR. Therefore, although the reference to hazardous substances is being deleted in § 173.8, those hazardous substances that are not subject to the CTC Regulations must still be transported in conformance with the HMR.

I. Classification of Rule; Reporting Requirements; and Impact on Small Entities

A. Non-Major Rule. The Materials Transportation Bureau has determined that this regulatory amendment is not a major rule under terms of Executive Order 12291 or significant under DOT's regulatory procedures (44 FR 11034), and does not require a Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.) A regulatory evaluation is not warranted since the anticipated impact is minimal.

B. Impact on Small Entities. Based on information available concerning size and nature of entities likely to be affected, I certify that this amendment will not as promulgated, have a significant economic impact on a substantial number of small entities.

II. Final Rule Without Notice and Without Usual Delay in Effective Date

The MTB considers this action to constitute an emergency final rule due to the potential for serious economic impact on trans-border shipments if MTB does not take expedited action and since this rule changes does not impose additional requirements, notice and procedure thereon are considered unnecessary. For the same reason, it is considered necessary to make the rule effective immediately.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation. Regulations, Definitions.

**PART 173-SHIPERS-GENERAL
REQUIREMENTS FOR SHIPMENTS
AND PACKAGINGS**

In consideration of the foregoing, 49
CFR 173 is amended as follows:

§ 173.8 [Amended]

In § 173.8, paragraph (a) is amended
by removing the words "and hazardous
substances".

(49 U.S.C. 1803, 1804, 1808 and 1809; 49 CFR
1.53, Appendix A to Part 1)

Issued in Washington, D.C. on May 24,
1983.

L. D. Santman,

Director, Materials Transportation Bureau.

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